

HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

CFG PRIVATE EQUITY, LLC,
ULTRASEAL DISTRIBUTORS, LLC,

Plaintiff,

v.

ULTRASEAL INTERNATIONAL, INC.,
KEITH W. CLANCY,

Defendant.

CASE NO. C12-5651 RBL

ORDER DENYING MOTION FOR
PARTIAL SUMMARY JUDGMENT
[DKT. 53]

This matter involves a contract dispute between CFG¹ and Ultraseal. In February of 2011, the parties entered into an agreement that gave CFG the right to sell Ultraseal's products. The initial term of the agreement was one year. According to the terms of the contract, if CFG increased Ultraseal's net volume of sales 100 percent above "the baseline" during that first year, the contract would automatically renew for two successive five-year terms. CFG filed this lawsuit after its relationship with Ultraseal ended in 2012. Currently before the Court is UltraSeal's motion for partial summary judgment that asks the Court to establish as a matter of law that the contract did not automatically renew after the initial one-year term. Because

¹ Ultraseal Distributors, LLC is also a plaintiff in this case, but to avoid confusion, this Order will collectively refer to Plaintiffs as "CFG."

1 material questions of fact remain in dispute, including the meaning of the term “baseline,” how
2 to calculate the baseline figure, and ultimately whether CFG increased Ultraseal’s sales 100%
3 above that amount, Ultraseal’s motion is **DENIED**.

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5 **I. BACKGROUND**

6 The parties entered into the agreement on February 1, 2011. The agreement gave CFG an
7 almost exclusive right to sell Ultraseal’s products throughout the world on a commission basis.

8 The section of the contract that established the term of the agreement provides:

9 10. Term of Agreement: The term of this Agreement shall be for one (1) year
10 and automatically renewed for two successive five year terms if at the time of
11 expiration of the initial one-year term Global Sales and Marketing Team has
12 increased Ultraseal’s net volume of sales one-hundred percent (100%) above the
13 baseline.

14 According to CFG, it sold Ultraseal’s products under the terms of the agreement until it
15 received a letter from Elizabeth Aguirre, Ultraseal’s President and owner, in May of 2012. In
16 her letter, Aguirre claimed that the agreement did not automatically renew and that CFG and
17 Ultraseal’s business relationship had expired on February 1st. Her letter instructed CFG to stop
18 selling Ultraseal’s products and using its name. CFG subsequently filed this lawsuit.

19 This Court has previously denied CFG’s motion for a preliminary injunction and has
20 denied Ultraseal’s motion for summary judgment on all of CFG’s claims. Ultraseal now asks the
21 Court to establish as a matter of law that the contract did not automatically renew according to
22 the terms of the agreement. Ultraseal argues that the parties agreed when they entered into the
23 contract that “baseline” refers to its previous year’s sales. Ultraseal also contends that it has
24 submitted uncontroverted evidence that establishes its previous year’s sales and CFG’s sales
25 figures during the term of the agreement. According to Ultraseal, that evidence shows that CFG
26 did not increase its sales 100% above the baseline. CFG has argued that the parties agreed that
27 “baseline” refers to some arbitrary number that they were supposed to establish after CFG had
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1 sold Ultraseal's profits for a couple of months. CFG also argues that even if the parties intended
2 "baseline" to mean the previous year's sales, Ultraseal improperly calculated the baseline figure
3 and CFG's sales.

4 II. DISCUSSION

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6 Summary judgment is appropriate when, viewing the facts in the light most favorable to
7 the nonmoving party, there is no genuine issue of material fact which would preclude summary
8 judgment as a matter of law. Once the moving party has satisfied its burden, it is entitled to
9 summary judgment if the non-moving party fails to present, by affidavits, depositions, answers to
10 interrogatories, or admissions on file, "specific facts showing that there is a genuine issue for
11 trial." *Celotex Corp. v. Catrett*, 477 U.S. 317, 324, 106 S. Ct. 2548, 91 L.Ed.2d 265 (1986).
12 "The mere existence of a scintilla of evidence in support of the non-moving party's position is
13 not sufficient." *Triton Energy Corp. v. Square D Co.*, 68 F.3d 1216, 1221 (9th Cir.1995).
14 Factual disputes whose resolution would not affect the outcome of the suit are irrelevant to the
15 consideration of a motion for summary judgment. *Anderson v. Liberty Lobby, Inc.*, 477 U.S.
16 242, 248, 106 S. Ct. 2505, 91 L.Ed.2d 202 (1986). In other words, "summary judgment should
17 be granted where the nonmoving party fails to offer evidence from which a reasonable [fact
18 finder] could return a [decision] in its favor." *Triton Energy*, 68 F.3d at 1220.

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21 Contracts are to be interpreted to give effect to the parties' intentions. *Berg v. Hudesman*,
22 115 Wash.2d 657, 663, 801 P.2d 222, 226 (Wash. 1990). Contract interpretation is a question of
23 law if it is unnecessary to rely on extrinsic evidence or if only one reasonable inference can be
24 drawn from the extrinsic evidence. *Tanner Elec. Corp. v. Puget Sound Power & Light Co.*, 128
25 Wash.2d 656, 674, 911 P.2d 1301, 1310 (Wash. 1996). When the parties' intentions must be
26 determined from extrinsic evidence, however, it is the trier of fact's role to evaluate the
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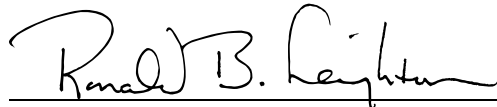
1 credibility of the evidence and to choose among varying reasonable inferences that can be drawn
2 from the evidence. *Berg*, 115 Wash.2d at 668, 801 P.2d at 229 (citing *Restatement (Second) of*
3 *Contracts* §§ 212, 214(c) (1981)).

4 There is no question that the term “baseline” as used in the contract is ambiguous and
5 requires interpretation. The contract does not define “baseline.” The context in which the term
6 is used establishes that the “baseline” is some amount of sales, but what that amount is or how it
7 is supposed to be calculated is unclear from the contract. The parties have submitted conflicting
8 declarations regarding what they believed “baseline” to mean when they entered into the contract
9 and how the baseline figure would be calculated. Because both parties’ interpretations are
10 reasonable, and because it is solely within the province of a trier of fact to evaluate the credibility
11 of the evidence, Ultraseal’s motion for partial summary judgment must be **DENIED**.
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13 III. CONCLUSION

14 As the Court noted in a prior order, the claims and defenses in this case are replete with
15 questions of fact. Among the questions of fact that remains for trial is what the parties intended
16 “baseline” to mean and how to calculate the baseline figure. Ultraseal’s motion for partial
17 summary judgment is **DENIED**.
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19 Dated this 30th day of October, 2013.

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22 RONALD B. LEIGHTON
23 UNITED STATES DISTRICT JUDGE
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